

## HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

VATAP-129-2017

Reserved on: 22.02.2023

Pronounced on: 27.04.2023

Excise and Taxation Commissioner, Panchkula

....Appellant

V/s.

M/s. Balaji Motors, Hisar and another

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Ms. Mamta Singla Talwar, DAG, Haryana.

Mr. Sandeep Goyal, Advocate with  
Mr. Rishab Singla, Advocate,  
Ms. Nazuk Singhal, Advocate and  
Mr. Ishan Loomba, Advocate  
for the respondents.

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**Ritu Bahri, J.**

The revenue has come up in appeal against the order dated 03.02.2017 passed by Haryana Tax Tribunal (respondent No.2) in STA No. 293 of 2015-16 (Annexure A-4) whereby on an appeal filed by the respondent-assessee assailing order dated 30.10.2015 passed by the revisional authority Hisar creating additional demand of tax amounting to Rs.3,23,359/- and interest under Section 14(6) of the Haryana Value Added Tax Act, 2003 (in short, the HVAT Act) has been allowed to the extent that interest on the above said demand amount is leviable from the date of order of the revisional authority and not from the date of filing of the return. Further direction has been given to the Assessing Authority to recalculate the interest on the additional demand.

2. Learned counsel for the appellant, at the outset, has referred to the order dated 30.10.2015 passed by the Deputy Excise & Taxation

Commissioner-cum-Revisional Authority (Annexure A-2) wherein the order passed by the assessing authority was modified on two grounds:-

1. Income worth Rs.2,06,807/- received by the dealer from M/s. Asia Motor Works against the repair of accidental trucks is eligible to tax as no sale of parts consumed in the repair of accidental vehicle has been shown by the dealer firm nor levied by the Assessing Authority in the assessment. The tax on Rs.2,06,807/- which comes to Rs.27,143/- is now levied.

2. The warranty claim of Rs.22,56,885/- received in the shape of credit notes from the company i.e. M/s. Asia Motor Works in respect of the goods replaced during warranty claim and reduced from purchases are liable to tax and the tax levied is Rs.2,96,216/- .

3. Hence the total tax levied was Rs.3,23,359/- (1+2) was payable by the dealer along with quarterly returns. After making the assessment by the Revisional Authority, direction was given to the Assessing Authority to recover the tax of Rs.3,23,359/- and interest under Section 14(6) of the HVAT Act, 2003 from the dealer within two months from the receipt of the order.

4. She has further stated that after order dated 30.10.2015 (Annexure A-2) passed by the Revisional Authority, notice dated 23.12.2015 (Annexure A-3) was given by the Assessing Authority to the respondent after calculating tax and interest as under:-

|                                                         |              |
|---------------------------------------------------------|--------------|
| Total demand created by the Ld. DETC (ST)-cum-RA, Hisar | Rs.323359.00 |
| Interest calculated from 01.10.2011 to 23.12.2015       | Rs.323359.00 |
| Total due                                               | Rs.646718.00 |

5. She has argued that this interest was calculated by the Assessing Officer under Section 14(6) of the HVAT Act, 2003 from 01.10.2011 to 23.12.2015 i.e. 1544 days and after calculating the above said

amount, notice dated 23.12.2015 was issued (Annexure A-3) to the respondent and from 23.12.2015, provisions of Section 23 of HVAT Act, 2003 for recovery of the tax due would start. As per notice dated 23.12.2015 (Annexure A-3) an amount of Rs.6,46,718/- was to be deposited within 30 days of the service of the notice and, thereafter, the respondent was liable to pay in addition to the amount due, simple interest on such amount at one-and-a-half per cent per month if the payment is made within ninety days but if the default continues thereafter, at three per cent per month for the period from the last date for the payment of the amount in time to the date the respondent makes the payment. She has referred to the order passed by the *Haryana Tax Tribunal, Chandigarh in STA No. 897 of 2010-11 titled as M/s. Faridabad Fabricators (P) Ltd., Faridabad vs. State of Haryana*, decided on 30.01.2014, wherein the Tribunal was examining an issue whether the revisional authority found an illegality and impropriety in the assessment order passed by the Assessing Officer and modified the assessment order. The issue before the Tribunal was that whether the revisional authority could charge interest on the additional demand created during revisional proceedings. The Tribunal held that the assessee was required to pay the tax alongwith the interest in accordance with the provisions of Section 14 of the HVAT Act and the Rules framed thereunder. Non-payment of tax according to the provisions of the Act would amount to failure to make the payment of tax as required under sub sections (3), (4) and (5) of Section 14 of the HVAT Act and hence the assessee was liable to pay interest also as provided in sub-section (6) of Section 14 of the Act. Therefore, the revisional authority was right in imposing the interest as per Section 14(6) of the HVAT Act.

6. She has further referred to Division Bench judgment passed by this Court in ***Morinda Co-operative Sugar Mill Ltd. vs. State of Punjab 2017(7) G.S.T.L. 179*** wherein this Court was considering the liability to pay tax, interest and penalty under Section 32 and 53 of the Punjab Value Added Tax Act, 2005 which are *pari materia* same to the HVAT Act. The Division Bench held that as per Section 26(3), every person is bound to pay the full amount of tax due from him as per the provisions of the Act and not to the amount according to the assessee is payable. Thus the liability for payment of interest under Section 32(1) is from the due date for payment and the due date for payment would be the date on which the payment is liable to be made under Rule 36, i.e. the date he is liable to file return.

7. She has further referred to the judgment passed by the Supreme Court in the ***Commissioner of Sales Tax vs. M/s. Qureshi Cruchible Centre, 1994 AIR (Supreme Court) 25*** in which the Supreme Court was examining levy of interest under the Uttar Pradesh Sales Tax Act, 1948. While dealing with Section 8(1) it was held that the tax admittedly payable means the tax which is payable under the Act on a turnover of sale and hence payment of interest cannot be deleted on the ground that he was not aware about the process of calculation of tax.

8. Learned counsel for the respondent Mr. Sandeep Goyal has argued that provision of Section 14 of the HVAT Act for filing returns, assessment and collection of tax relate to the filing by the assessee himself and the assessee has to file the returns quarterly in time and if he is not filing those self assessment returns in time then he is liable to make payment of interest under Section 14(6). He has referred to the Full Bench judgment passed by this Court in ***United Riceland Limited and another vs. State of***

*Haryana and others (1997) 104 STC 362 (Pun)*, Division Bench judgment passed by this Court in *Chaudhary Tractor Company, Tohana, District Sirsa vs. State of Haryana (2007) 30 PHT 659 (P&H)* wherein it has been held that the demand for interest is without any authority under Section 25(5) of the Haryana General Sales Tax Act, 1973. The revisional authority while creating a demand cannot charge interest from the date prior to raising demand.

9. He has further referred to the judgment passed by the Hon'ble Supreme Court in *State of Rajasthan vs. Ghasilal (1965) 2 SCR 805* on the proposition that revisional authority can only impose interest from the date of order of the revisional authority and not prior to that. The said judgment has, thereafter, been followed by the Hon'ble Supreme Court in *Associated Cement Company Limited vs. Commercial Tax Officer, Kota and others, 1982 Supreme Court Cases (Tax) 3*. In para No. 33 and 34 of this judgment, it was observed as under:-

“33. In the present case if we construe the words "on the basis of return" occurring in sub-section (2) of Section 7 of the Act as on the basis of a true and proper return which ought to have been filed under sub-section (1) of Section 7 then all the three classes of persons viz. (i) those who have not filed any return at all and who are later on found to be liable to be assessed, (ii) those who have filed a true return but have not deposited the full amount of tax which they are liable to pay and (iii) those who have filed a return making a wrong claim that either the whole or any part of the turnover is not taxable and who are subsequently found to have made a wrong claim, would be

placed in the same position and they would all be liable to pay interest on the amount of tax which they are liable to pay but have not paid as required by sub-section (2) of Section 7 of the Act. We are of opinion that this view is in conformity with the legislative intention in enacting Section 11B of the Act.

34. We have carefully gone through the decision of five learned judges of this Court in *State of Rajasthan and Ors. v. Ghasi Lal* and we are humbly of opinion that it is distinguishable from the present case. In *Ghasi Lal case (supra)*, this Court was concerned with the question of sustainability of penalties imposed under the Act and not interest leviable under Section 11B. The relevant facts in that case were these: The respondent therein who was a dealer within the meaning of the Act filed a writ petition in the High Court of Rajasthan challenging the making of assessment on his turnover for the year 1955-56 on the ground that the Rules which had been published on March 28, 1955 were invalid. On January 9, 1958 the High Court passed an interim order stating that "the petitioner will keep proper accounts and file the prescribed returns but shall not be assessed till further orders". While the petition was pending in the High Court, ordinance No. 5 of 1959 was promulgated on November 6, 1959 validating the Rules. Thereupon the respondent therein withdrew the writ petition. On December 17, 1959, the Rajasthan Sales Tax Validation Act (Rajasthan Act 43 of 1959) replaced the Ordinance. The effect of the Ordinance and the Validation Act was to validate the Rules

even if any defect existed in the making of the Rules. On December 4, 1959, the Sales Tax Officer called upon the respondent therein to pay the tax due by him within a week as the writ petition had been withdrawn and dismissed. The respondent had filed his returns earlier and also had deposited certain amounts towards tax. On April 25, 1960, the Sales Tax Officer made an assessment in respect of the accounting period November 3, 1956 to October 22, 1957 and also proceeded to impose a penalty of Rs. 400/- under Section 16(1)(b) of the Act.

Justifying the imposition of penalty, he observed thus:

"The assessee has not deposited tax of the quarters on the due date, the tax deposited for 4<sup>th</sup> quarter is very late, i.e., after two years the assessee was given a notice and in reply to which he referred the stay order of the Hon'ble High Court granted to him in a writ petition filed challenging the validity of sales tax rules made under the Act. The stay order of the Hon'ble High Court does not say that the assessee is allowed to withhold the tax. On the contrary, it directs that the petitioner (assessee) will keep proper accounts and file prescribed returns but shall not be assessed. This clearly shows that the assessee should have filed returns in time and according to Section 7(2) the treasury challan of the deposit should have accompanied them. This amounts to contravention of the mandatory provisions. The writ was dismissed on 23-4-58 (sic 23-11 59), even the amount was not deposited till 17-12-59. This shows that the assessee withheld the tax intentionally".

10. Learned counsel for the appellant has argued that the judgment referred to by learned counsel for the respondents will not be applicable to the facts of the present case as those cases pertain to Haryana General Sales Tax Act, 1973 where the scheme was entirely different. The dealer therein was liable to pay interest under Section 25(5) if the tax has not been deposited by him as required under sub Section 2-A and sub Section 3. Under the Act, 1973, the dealer was liable to pay tax as per monthly or quarterly returns. On failure to do so, he was liable to pay interest under Section 25(5) of the Act. She further argued that the provision of Section 23 of the HVAT Act, 2003 is not applicable to the controversy in question as the interest as per Section 23 is applicable after finalization of demand wherein the interest is leviable if the dealer does not pay the additional demand within 30 days of service of notice of demand or that supply of the order to the assessee. In the present case, the revisional proceedings have been carried out under HVAT Act, 2003. However, with respect to interest, the relevant Section is 14(6).

11. Heard learned counsel for the parties.

12. The judgment referred to by learned counsel for the respondents in ***United Riceland Limited and another vs. State of Haryana and others (1997) 104 STC 362 (Pun)***, and ***Chaudhary Tractor Company, Tohana, District Sirsa vs. State of Haryana (2007) 30 PHT 659 (P&H)*** would not be applicable as these cases deal with the provision of demand of interest under Section 25(3) of the Haryana General Sales Tax Act, 1973. Even the judgment of the Hon'ble Supreme Court in ***Ghasi Lal's case (supra)*** cannot be applied in the present case as the present case deals with the provisions of Haryana VAT Act, 2003. The relevant provision of 14(6)

is as under:-

“If any dealer fails to make payment of tax in accordance with the provisions of this Act and the rules made thereunder, he shall be liable to pay in addition to the tax payable by him, simple interest at one per cent per month if the payment is made within ninety days from the last date specified for the payment of tax, but if the default continues thereafter, he shall be liable to pay interest at two per cent per month for the whole of the period from the last date specified for the payment of tax to the date he makes the payment:

PROVIDED that the interest leviable under this Act shall not exceed the amount of tax or penalty on the non-payment or late payment of tax on which such interest is charged.”

13. The above said provision makes it abundantly clear that simple interest at one per cent per month is to be charged if the payment is made within ninety days from the last date specified for the payment of tax and two per cent per month for the whole of the period he makes the payment beyond ninety days. If the tax is not paid as per the Act, the assessee is liable to pay tax alongwith the interest as per provisions of Section 14(6) of the HVAT Act.

14. The judgment referred to by learned counsel for the appellant in *M/s. Faridabad Fabricators (P) Ltd., Faridabad vs. State of Haryana*, is directly applicable to the facts of the present case. The assessee was required to pay the tax payable in accordance with the provisions of Section 14 of the HVAT Act and the Rules framed thereunder.

Non-payment of tax according to the provision of the Act will certainly

amount to failure to make payment of tax which renders the assessee liable to pay interest also as provided in Section 14(6). The liability to pay interest would be from the date the tax was supposed to be deposited by the assessee.

15. Keeping in view the above, the instant appeal is allowed and the order dated 03.02.2017 passed by Haryana Tax Tribunal (respondent No. 2) is modified that the interest on the additional demand is leviable from the date of filing of the return. A direction is given to the Assessing Authority to recalculate the interest on the additional demand.

**(RITU BAHRI)**  
**JUDGE**

**27.04.2023**

Divyanshi

**(MANISHA BATRA)**  
**JUDGE**

**Whether speaking/reasoned:**

**Yes/No**

**Whether reportable:**

**Yes/No**